intimidated by these threats and reluctantly agreed to the sales (Tr. 426, 450).

ARGUMENT

1. Petitioner contends that the trial judge erred in not instructing the jury that the government's failure to call police officer A. P. Epps and Neal Pierce raised an inference that such testimony would have been unfavorable to the government.[2] But Pierce did not participate in the sales; he merely arranged by telephone for the preliminary meeting between the government undercover agent and petitioner on October 1, 1969 (Tr. 104-105). The substance of these telephone calls was brought out during Agent Caraway's testimony (Tr. 169-172, 220-221). Since Pierce's testimony on this issue would have been merely cumulative, no negative inference arises from the failure of the government to call him as a witness. *United States* v. *Tant*, 412 F. 2d 840 (C.A. 5), certiorari denied, 396 U.S. 876.

The record does not disclose the role played by Officer Epps in the investigation leading to the sales and petitioner's arrest. Nor did petitioner's counsel at the trial suggest what, if any, special information relevant to the case was possessed by that officer. Surely absent a showing that Officer Epps' testimony would have further elucidated the transaction, there was no basis for a presumption that the witness' testimony would have been unfavorable to the government. *Wynn* v. *United States*, 397 F. 2d 621, 625 (C.A. D.C.).

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[2] Both were present at the trial but were not called by either side.

2. Petitioner called a number of witnesses who testified to his good reputation. The trial judge instructed the jury (Tr. 684-685):

> The defendant has offered evidence here as to his good professional reputation and his reputation for being a peaceable, law-abiding citizen. That evidence should be considered by you along with all of the other evidence in the case. If, taking into consideration all of the evidence in the case relating to any particular count, you have a reasonable doubt as to the defendant's guilt thereunder, you must acquit him.

The court refused to instruct, as requested by petitioner, that evidence of good character, standing alone, may be sufficient to give rise to a reasonable doubt of guilt. Relying upon *Edgington* v. *United States*, 164 U.S. 361, and *Michelson* v. *United States*, 335 U.S. 469, petitioner argues that the "standing alone" instruction was required. Both those decisions state that in some circumstances evidence of good character may alone create a reasonable doubt without particularizing when those circumstances exist. As petitioner points out (Pet. 8), the circuit courts are not in agreement as to whether such an instruction must be given in any case where evidence of good character is adduced. All the courts of appeals which have been presented with the issue, other than the District of Columbia [3] and possibly the Seventh Circuit [4] now hold that an instruction

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[3] *Villaroman* v. *United States*, 184 F. 2d 261, 263 (C.A. D.C.).

[4] See *United States* v. *Wicoff*, 187 F. 2d 886, 890 (C.A. 7).

such as that given here is sufficient, particularly where good character is not the sole basis for the defense. See *United States* v. *Cashio,* 420 F. 2d 1132, 1135 (C.A. 5), certiorari denied, 397 U.S. 1007; *Oertle* v. *United States,* 370 F. 2d 719, 726-727 (C.A. 10), certiorari denied, 387 U.S. 943. This Court has not previously deemed it necessary to reconcile the differences among the circuits on this matter, and there is no need to do so now. Petitioner admitted the sales involved and relied primarily on the defense of entrapment to which his character evidence was incidental.

The "standing alone" instruction would have inappropriately focused the jury's attention on but one aspect of the defense. See *Smith* v. *United States,* 305 F. 2d 197, 206-207 (C.A. 9), certiorari denied, 371 U.S. 890.

3. The district court allowed petitioner's attorney to examine the government file except for material deemed to be pertinent to other persons under investigation (Tr. 203-204). The trial court made an *in camera* review of the excised portions and granted petitioner access to some of the withheld contents. Petitioner argued that defense counsel is the only party capable of determining what material is relevant to the defense and that failure to allow counsel to inspect the file amounted to a denial of due process. There is nothing in the holding of *Brady* v. *Maryland,* 373 U.S. 83, upon which the petitioner relies, that requires a complete disclosure of the government's file. See *Hemphill* v. *United States,* 392 F. 2d 45, 48 (C.A. 8). The trial court found nothing in the remain-

ing portion of the government's file favorable to the petitioner. The court of appeals, after examining the material, reached the same conclusion (Pet. App. 15-16). Further review of this factual issue is not warranted.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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